

**Alexandria Township
Land Use Board
Meeting Minutes June 17, 2021**

Vice Chair Papazian called the regular meeting of the Alexandria Township Land Use Board to Order at 7:33 pm. This Virtual Meeting is called pursuant to the provisions of the Open Public Meetings Act. Both adequate and electronic notice of this virtual meeting has been provided by way of publication in the Hunterdon County Democrat newspaper on or about January 28, 2021. In addition, notice of the meeting was posted on the door of the Alexandria Township Municipal Office located at 242 Little-York Mt. Pleasant Road, Milford and any handicapped-accessible entrances thereto; posted on the municipal website; provided to the municipal Clerk and distributed to all persons, if any, requesting copies of same. This meeting is being recorded with both audio and video and may be rebroadcast. This meeting is a judicial proceeding, any questions or comments must be limited to the issues that are relevant to what the Board may legally consider in reaching a decision and decorum appropriate to a judicial hearing must be maintained at all times.

Members Present: Vice Chair Papazian, Fritsche, Freedman, Canavan, Tucker, Committeeman Kiernan, Giannone, and Kimsey.

Members Absent: Chair Rochelle, Deputy Mayor Pfefferle, Pauch, and Hahola.

Board Professionals Present: Kara Kaczynski-Attorney, David Banisch-Planner, Tom Decker-Engineer (8:40pm)

Others Present:

De Sapio Properties #6 Inc: Guy De Sapio-Attorney, James Kyle-Planner, Yuuji Crance-Witness, Antonio De Sapio- Member.

K Street: Michael Selvaggi-Attorney, Robert Aromando-Applicant, Peter Fleming-Engineer.

Kaczynski asked if there are any matters on the agenda this evening that Board members have a personal or financial interest in, or cannot be unbiased during a decision, to advise the Board attorney. This statement will be instituted during the beginning of each meeting.

Minutes Approval

A motion to approve the May 20, 2021, Regular Meeting Minutes of the Land Use Board was made by **Fritsche** and seconded by **Tucker**. **Ayes: Papazian, Fritsche, Freedman, Canavan, Tucker, Committeeman Kiernan, Giannone, and Kimsey. No Nays. Motion Carried.**

New and Pending Matters

- Potter – Minor Subdivision – Resolution of Approval
Block 4 Lots 9.01 & 10
410 Goritz Rd & Goritz Rd

Banisch advised under the conditions section on page 4, last paragraph, there were two conditions not listed. The Board added two conditions which were agreed to by the applicant.

Condition #6 – The applicant should submit to the Board a Highlands Determination pursuant to the applicant's testimony.

Condition #7 – The applicant will pursue a Woodlands Management plan and approval on the site and submit to the Board.

Fritsche made a motion and **Tucker** seconded the motion to to approve the amended resolution of approval as enumerated by **Banisch**. **Ayes: Vice Chair Papazian, Fritsche, Freedman, Tucker, Committeeman Kiernan and Giannone. No Nays. Motion Carried.**

- K Street & Peacefield Management Group – Site Plan – Use Variance – Completeness Review
Block 15 Lot 10
681 Cty Road 513

Kaczynski stated for the record that Class I and Class III members need to recuse themselves since this is a Use Variance. **Papazian** recused himself as well at 7:40pm. **Canavan** presided over the K Street & Peacefield Management Group application.

Canavan advised that the document marked as summary of operations was marked confidential, **Kaczynski** advised when a document is submitted to a public body, it can no longer be kept confidential. Attorney Michael Selvaggi advised this was an oversight. He agreed that once the document is submitted to the Board it is a public document under OPRA.

Canavan advised that although **Decker** is not present, he submitted a review letter dated June 16, 2021 with his comments on the application. Attorney Selvaggi advised that the missing information from **Decker's** previous completeness review has been provided and the recommendation from the Board Engineer is to deem the application complete. **Canavan** asked Attorney Selvaggi to comment on **Decker's** report page 3, item 2.

2. Subject to testimony and Board discussion, the proposed "bed-and-breakfast" use may be more in line with Ordinance §115-22E(8) for an Inn. As a non-permitted use, an Inn would require a d(1) variance.

Ordinance §115-22E(8)

E-8 Inn. Such use shall include a building or group of buildings containing no more than 20 rooms for rent for the accommodation of transient guests, plus an eating place, Use E-5, provided that:

- (a) The use must have direct access to a collector or arterial street.*
- (b) Units in such facilities shall contain a minimum of 200 square feet of floor space, with a minimum of two rooms: a bedroom and a separate bathroom equipped with a toilet, a lavatory basin and a bathtub or shower, all connected to an acceptable wastewater disposal system, designed in accordance with an approved wastewater management plan.*
- (c) No less than one off-street parking space shall be provided for each guest room, in addition to any parking required for any eating place not for the exclusive use of guests.*

Selvaggi advised regardless, the applicant will need to obtain a use variance relief for having two principle uses. He takes no exception to calling it an inn. He believes the most significant distinction is that the homeowner will not be living there. **Banisch** advised the public notice should include mention of the fact that use variance relief may be required. **Kaczynski** advised that she would be happy to review the public notice.

Canavan also brought up the engineer's report Item 3.

3. The applicant should be prepared to address compliance with the restrictions as provided in the "Deed of Easement, State of New Jersey, Agricultural Retention and Development Program" dated November 2, 2020. Specific restrictions of concern within the Exception Area are:

13(b) Grantor, their heirs, executors, administrators, personal or legal representatives, successors and assigns may use and maintain the Exception Area, as described in the attached Schedule C subject to the following conditions:

- i. The Exception Area shall not be moved to another portion of the Premises and shall not be swapped with other land.*
- ii The Exception Area shall not be severed or subdivided from the Premises.*
- iii The Exception Area shall be limited to two (2) single family residential units*

In question is whether the proposed bed-and-breakfast use is consistent with 13(b)iii limiting the Exception Area to two (2) single family residential units. The B&B proposes two (2) bedrooms for the Inn Keeper and six (6) guest suites.

Selvaggi advised the applicant submitted a written request to the representatives of the SADC. He expects to have a written response from the SADC and will provide that response. **Banisch** said that he understands that Selvaggi will have a clarification from the SADC on comment 3. iii. of the engineer's report. Selvaggi advised that he would.

Canavan took a roll call for comments regarding the completeness review. **Fritsche** expressed concerns over the completeness review process. **Kaczynski** advised the Board can address those concerns at the public hearing. There were no other comments or questions.

A motion was made by **Tucker** and seconded by **Canavan** that the application be deemed complete subject to the waivers that were previously granted at the last meeting. **Ayes: Freedman, Tucker, Canavan, Giannone and Kimsey. Nays: Fritsche. Motion Carried.**

- De Sapia Properties #6 Inc and Delaware River Tubing, LLC – Amended Site Plan – Public Hearing
Block 17.01 Lots 12
776 Milford-Frenchtown Road

At 8:00pm **Vice Chair Papazian** returned. Attorney De Sapia announced the continuance of the public hearing. James Kyle was sworn in and deemed qualified as an expert by the Board. He advised he reviewed the application along with the Board professionals' reviews and the Township Master Plan. Kyle displayed an aerial photo of the property from 2019. **Kaczynski** marked the exhibit A-4.

Kyle advised the subject property is approximately 12.66 acres and has an existing single level masonry structure in the northeast area of the site along with the gravel parking area, some of which is proposed to be removed. Kyle reviewed the properties to the north and south of the applicant's property. He advised the other properties have outdoor storage. There is a single-family residence to the northeast. The property immediately to the east is not developed.

Kyle reviewed the changes the applicant is seeking to make to the 2016 approval. The request for additional parking that was shown on the plans has been eliminated. The applicant is not seeking to change the original 120 parking spaces that were approved in 2016.

Kyle continued that the property is in the IC district and listed some of the permitted uses for the district. Notably, he advised that the district does permit outside storage, H-5 – Outside Storage. There are three variances required for the application. They are 115-22; H-5 (a.) 1. & 3 and 115-22; H-6 Temporary Structures of a non-recurring nature. The request is to have these structures installed on a regular basis during the operating season. These consist of the portable shower, two changing buses, 2-3 - 10'x20' open sided tents at the front, which is for storage of the rafts and tubes in the front yard.

These three variances require the applicant to demonstrate the positive and negative criteria for the zone. He advised these variances qualify under the C-2 criteria. He noted case history where the court declared in the case of C-2 variances, the board should consider the benefits of the application as a whole rather than the benefits of the individual variance.

From Kyle's review of the site, he advised the benefits are from a larger perspective. He continued this use is a great resource that allows for residents and visitors to enjoy the river in a convenient way. It also brings tourism dollars into the township and the county. He advised the county addressed this in their comprehensive economic development strategy. The county saw an opportunity in that these types of recreation and tourism uses help to bring economic development into the county. He advised this is not only good for residents in the county, but also for people that come from wider area to use this facility.

Kyle continued, on a smaller scale, the current configuration that exists for parking and loading is the safest for patrons to use this resource. Upon his review of past discussions through the minutes, the testimony is consistent that the current circulation is the safest way for patrons and is the most efficient way for operations to be conducted.

Kyle advised these variances fit the C-2 positive criteria for purposes of the zoning. The first is (a) to promote the public welfare, (h) to promote the free flow of traffic, and (m) to the more efficient use of land. He continued allowing the outdoor storage in the location proposed optimizes the site and allows for efficient use especially in as far as the other tenants of the building are concerned. The current operations eliminate potential conflicts with pedestrians. While there are other locations on the site where changes could be made, it would mean that safety and efficiency would be compromised. He advised storing the life jackets and tubes caused issues with mold. Storing the equipment outside allows these items to dry more thoroughly. He feels granting the variance for outdoor storage addresses safety concerns for patrons.

Kyle continued that the negative criteria, substantial detriment to the public good, refers specifically to the impact of surrounding properties. The outdoor storage is seasonal which exists for about 3 months out of the year and is eliminated during the off season. He reiterated the minimal impact to surrounding properties by outdoor storage. As far as perception from the roadway, the speed limit is 45mph which is passed through quickly. Outdoor storage for this area in the front yard is not completely out of character as other neighboring businesses have such storage.

Kiernan asked if Kyle examined the 2016 land use approval which was limited to 120 spaces. Kyle advised that he did and the applicant has made changes to operational procedures to cut down on the amount of parking needed. He continued that he understands that there have been some suggestions of physical barriers. **Kiernan** pointed out the 2016 site plan for 120 spaces has not been adhered to.

Attorney De Sapio suggested the applicant is willing to use barrels to prevent parking on that side of the parking lot. There were no further questions from the Board for this witness.

Attorney De Sapio requested the matter be wrapped up at this meeting. He reiterated the requested variances; the jersey barriers remaining in place through the year, variance for season outside storage of life jackets and tubes, approval for the portable showers, approval for the use of the building for food sales and preparation. He wanted to ensure that the question relating to the number of buses and vehicles operating at the site, is clear to the Board. **Kaczynski** asked if the NJDEP had approved barrels for use in the that area. Antonio De Sapio advised the applicant has been advised that there can not be anything placed in that area that penetrates the ground. The NJDEP has neither approved nor disapproved the use of barrels.

Banisch advised Kyle about the claim by the applicant for the need of additional parking six to eight times per year. **Banisch** felt that the barrels would be movable and would allow for the applicant to use this space for parking. Kyle advised that he understands the gravel is to be removed and the area restored. While it could still be used for parking, he felt it was necessary to take the applicant's word that it will not be. He also felt that this would be up to zoning for enforcement of the site plan. Kyle advised the barrels are in response to the concern of the NJDEP and could be shown on the site plan.

Banisch advised the other concern is outdoor storage from a picture presented in his report to the Board. He asked if it were possible to screen this from the road. Kyle advised that he discussed with the applicant the possibility of having one side of the tent closed, which would still allow air flow. The question of the tubes and rafts is more difficult. He suggested possibly lattice that may be able to be removed. Antonio De Sapio advised that if a barrier is erected that is 6'-8' high, a structural analysis would need to be done.

This year, the operator advised there would be no kayaks and half the tubes that were shown. Crance testified that Delaware River Tubing has removed all kayaks and canoes from online sales this season. He advised they would cut the tubes from 1500 tubes to 500. He advised the kayaks and canoes will still be on the property in buses and will be selling them. His father, who passed away, wanted their company to generate the maximum revenue for the local area as well as the business, and to provide a way for everyone to be able to access and enjoy the river. He envisions the same, however since he is now the owner and operator, he realizes the size of the operation is a major issue. He is going to guarantee that he will not be parking on the landfill under his leadership. He does not want issues with the Township and NJDEP. He advised he will not have a single car on the landfill. **Banisch** clarified the area with Crance and made it clear that he would only use the 120 spaces approved in 2016. He advised they have raised their prices to cut down on demand. Attorney De Sapio advised that with regards to screening the area in the front would be a safety and operational issue.

Papazian advised he would like to carry the meeting to July to meet in person and discuss and asked for Board comments. **Fritsche** felt that the Board members should be discussing the issues regarding screening and decisions should be made by the members. **Canavan** felt there were issues that were brought up that still need to be addressed and feels the applicant should come back with additional answers. **Tucker** advised she is not concerned with screening and does not have a problem with the view. She felt that we need to work with the applicant because we want businesses to succeed in the Township. **Kiernan** would like to move the public hearing to an in-person meeting to discuss options regarding fencing and other issues. **Giannone** advised his biggest concern is the five spots for fire safety. He doesn't see the difference between the outside storage of Delaware River Tubing and other businesses outside storage in this zone. **Kimsey** felt that as long as the applicant is able to continue to operate, it would be better to move the meeting to next month.

Kaczynski advised the Board would need an extension of the applicant in order to move the application to next month. From a legal perspective, she expressed concern regarding the plan from the applicant to remove kayaks and canoes which may or may not be permanent. There needs to be a definitive answer for granting the variance.

Papazian asked if there were any comments from the public on the application. There were none.

Papazian asked Attorney De Sapio for an extension of one more month. Attorney De Sapio advised that although he feels not much will change between now and the next meeting but will grant an extension. He continued as for the kayaks and canoes; Crance will sell them. Attorney De Sapio would like a stipulation granted by the Board that if he decides to operate with them, Crance will not store them in the front. Attorney De Sapio advised he does not want to limit the business forever. If the applicant, at some point wants to store them in the front, he would go before the Board for another variance. Attorney De Sapio expressed the reasons why the applicant has come back before the Board.

Kaczynski advised this would be adjourned to the July 15th meeting of the Board. No further notice will be required.

- Cannabis – Draft Ordinance – Review
Ordinance 2021-05 & 2021-06

Banisch advised these ordinances are referred to the Land Use Board by the governing body for a consistency review and determination under the provisions of N.J.S.A. 40:55D-26. Referral powers. These ordinances respond to the provisions of the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act” (the “Act”) that was signed into law by Governor Murphy on February 22, 2021. The Act authorizes six (6) classes of licensed cannabis establishments, distributors, or deliver services under NJ Law. The Act authorizes municipalities to prohibit the operation of any one or more classes of cannabis establishments, distributors, or delivery services anywhere in the municipality. The Act requires municipalities to enact local prohibitions of the six (2) classes of licenses of cannabis businesses within 180-days of the effective date of the Act. Otherwise, the Municipality will need to wait five years to prohibit.

Ordinance 2021-05 ordinance establishes a new chapter in the Township’s general ordinances entitled Cannabis Businesses. Ordinance No. 2021-06 amends Chapter 115, Land Use identifying definitions of the six (6) new classes of licenses recently established as legal cannabis commercial uses in New Jersey and includes the amendments to § 115-19 “Applicability of regulations”.

Banisch continued If no inconsistency between the Master Plan and the proposed development regulation is found, it is appropriate for the Board to find that the proposed development regulation is not inconsistent with the Master Plan.

A motion was made by **Papazian** and seconded by **Tucker** to find that the ordinances 2021-05 & 2021-06, referred to the Land Use Board by Alexandria Township is not inconsistent with the municipal master plan. **Ayes: Papazian, Fritsche, Freedman, Tucker, Canavan, Giannone and Kimsey. No Nays. Motion Carried.**

Correspondence

None

Comments from the Board/Public

There were none.

Approval of Bills

A motion was made to approve the bills for the professionals of the Land Use Board by **Canavan** and seconded by **Kiernan**. **Vote: Ayes: Papazian, Fritsche, Freedman, Canavan, Tucker, Committeeman Kiernan, Giannone, and Kimsey. No Nays. Motion Carried.**

Motion to Adjourn

A motion to adjourn was made by **Tucker** and seconded by **Freedman** at 9:28pm. **Vote: Ayes: Papazian, Fritsche, Freedman, Canavan, Tucker, Committeeman Kiernan, Giannone, and Kimsey. No Nays. Motion Carried.**

Leigh Gronau, Board Secretary